

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SMARTMATIC USA CORP.,
SMARTMATIC INTERNATIONAL
HOLDING B.V., and SGO
CORPORATION LIMITED,

Plaintiffs,

v.

MICHAEL J. LINDELL and MY
PILLOW, INC.,

Defendants.

Case No. 22-cv-0098-WMW-JFD

**MEMORANDUM OF LAW IN SUPPORT OF SMARTMATIC’S MOTION TO
REDACT JULY 25, 2023 HEARING TRANSCRIPT**

Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”) respectfully move the Court to seal the transcript of the Court’s July 25, 2023 motions hearing [ECF No. 162] (the “Hearing”) and to file publicly a copy containing the redactions indicated by yellow highlighting in Sealed Exhibit 1 to the Declaration of Michael E. Bloom filed with Smartmatic’s motion.

Courts have recognized “a common-law right of access to judicial records,” but “the right to inspect and copy judicial records is not absolute.” *IDT Corp. v. eBay*, 709 F.3d 1220, 1222 (8th Cir. 2013). “[S]alutary interests served by maintaining

confidentiality of the information sought to be sealed” are often held to outweigh the interests served by the common-law right of access. *Id.* at 1223. Included in those salutary interests is the preservation of confidentiality of competitively sensitive information. *Id.* at 1224. How a company “values certain aspects of its business operations” is considered sensitive and competitive business information that suggests sealing or redacting is appropriate, especially when it is “not plainly relevant to the [] issue the District Court has been asked to resolve.” *Blu Dot Design & Mfg., Inc. v. Stitch Indus., Inc.*, No. 17-cv-3208-PJS-KMM, 2018 WL 1370533, at *2 (D. Minn. Mar. 16, 2018).

During the Hearing, the parties discussed a Smartmatic document marked with the “Attorneys’ Eyes Only” designation. Smartmatic produced the document to Defendants in response to their requests for information about Smartmatic’s damages. Defendants stated at the Hearing that they did not file the document because of its confidential nature. The document contains highly sensitive and competitive business information that Smartmatic’s competitors could use to unfairly usurp business opportunities from Smartmatic. Discussion about the nature of the document at the Hearing, what it shows,

and what that means for Smartmatic's business, could also be used to compete unfairly with Smartmatic.

Smartmatic's proposed redactions are narrowly tailored to capture only this confidential information, and the proposed redactions leave alone any discussion not specifically pertaining to the document's contents. Importantly, the proposed redactions do not attempt to conceal discussion on the merits of whether Defendants are entitled to the information sought in their motion to compel. *Cf. ARP Wave, LLC v. Salpeter*, No. 18-cv-2046 (PJS/ECW), 2021 WL 406466, at *2 (D. Minn. Feb. 5, 2021) (rejecting proposed redactions that conceal the judge's "thoughts and inquiries related to the merits of the claims"). As such, the proposed redactions appropriately balance Smartmatic's interest in the preservation of its confidential business information with any generalized public interest in access to the proceedings on Defendants' motion to compel.

WHEREFORE, Smartmatic respectfully requests that the Court grant this motion, order that the unredacted transcript of the July 25, 2023 hearing be sealed, and permit public filing of a copy of the transcript containing the redactions indicated by yellow highlighting in Exhibit 1 to the Bloom Declaration.

Dated: August 23, 2023

Respectfully submitted,

/s/ Michael E. Bloom_____

Christopher K. Larus
Minnesota Bar No. 0226828
CLarus@robinskaplan.com
William E. Manske
Minnesota Bar No. 0392348
WManske@robinskaplan.com
Emily J. Tremblay
Minnesota Bar No. 0395003
ETremblay@robinskaplan.com
ROBINS KAPLAN LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 349-8500

J. Erik Connolly (admitted *pro hac vice*)
EConnolly@beneschlaw.com
Illinois ARDC No. 6269558
Nicole E. Wrigley (admitted *pro hac vice*)
NWrigley@beneschlaw.com
Illinois ARDC No. 6278749
Michael E. Bloom (admitted *pro hac vice*)
MBloom@beneschlaw.com
Illinois ARDC No. 6302422
Laura A. Seferian (admitted *pro hac vice*)
LSeferian@beneschlaw.com
Illinois ARDC No. 6330414
Julie M. Loftus (admitted *pro hac vice*)
JLoftus@beneschlaw.com
Illinois ARDC No. 6332174
**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**
71 South Wacker Drive, Suite 1600
Chicago, IL 60606
Telephone: (312) 212-4949

Alyssa A. Moscarino (admitted *pro hac vice*)
AMoscarino@beneschlaw.com
Ohio Bar No. 93847
James R. Bedell (admitted *pro hac vice*)

JBedell@beneschlaw.com

Ohio Bar No. 97921

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

127 Public Square, Suite 4900

Cleveland, OH 44114

Telephone: (216) 363-4500

Attorneys for the Plaintiffs